
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

TEVITA FINAU TAFUNA,

Defendant.

**ORDER GRANTING
DEFENDANT'S
MOTION TO SUPPRESS**

Case No. 2:19-cr-00112-JNP

Honorable Jill N. Parrish

Before the court is defendant Tevita Finau Tafuna's motion to suppress evidence. [Docket 20]. The court GRANTS the motion.

FINDINGS OF FACT

On January 25, 2019, at approximately 1:00 a.m., Tafuna was sitting in the passenger seat of a vehicle parked in the back corner of a large apartment complex. Tafuna's friend, who owned the vehicle, was seated in the driver's seat. Two other individuals were sitting in the back seat. The vehicle was backed into the parking space.

Officer Jeffery Nelson pulled into the apartment complex and observed the vehicle and its occupants. Officer Nelson was suspicious of the individuals sitting in the parked vehicle because, in his experience, this indicated drug use or a stolen vehicle. But he believed that he did not have the amount of reasonable suspicion required to detain the occupants of the vehicle. Officer Nelson pulled up to the vehicle at an angle with the front of his car pointed toward the driver's side door. His "takedown" lights—bright overhead lights across the top of his vehicle—were activated. The vehicle occupied by Tafuna was not blocked in by Officer Nelson's vehicle.

Officer Nelson approached the vehicle, inquired what the occupants were doing, and asked for their names and birth dates. He noticed an open beer can in the center console at that time. Tafuna identified himself, admitted that he was on probation, and stated that he had a knife with him. Officer Nelson told the occupants of the parked vehicle he was going to run their names and information and returned to his vehicle.

Officer Nelson then learned of Mr. Tafuna's prior background of gang affiliation and that he was listed as potentially being armed and violent. Officer Nelson requested back up, which took 10 or 15 minutes to arrive. Officer Austin Schmidt responded to the request for back up. When he arrived, he looked up Mr. Tafuna's parole agreement, which has a "section G" clause. That clause states:

G - Pursuant to state law [Utah Code §77-23-301], while I am on parole I am subject to search and seizure of my person, property, place of temporary or permanent residence, vehicle, or personal effects by a parole officer or by any other law enforcement officer at any time (with or without a search warrant, and with or without cause); however a law enforcement officer who is not my parole officer must either have prior approval from a parole officer or have a warrant for a search of, or seizure from, my residence.

Officer Nelson returned to the parked vehicle and asked Tafuna to exit. Officer Nelson conducted a pat down and discovered a pocketknife. Officer Nelson then searched the vehicle and discovered a firearm underneath the passenger seat. All of the occupants of the vehicle were arrested taken into custody at that point. Officer Nelson notified Tafuna of his *Miranda* rights and interviewed him at the scene. Tafuna admitted to possession of the firearm.

CONCLUSIONS OF LAW

Tafuna argues that the firearm and his subsequent confession should be suppressed for two reasons. First, he asserts that Officer Nelson violated his Fourth Amendment rights by detaining him without reasonable suspicion of criminal activity by

shining his headlights and takedown lights at the vehicle he occupied and then approaching on foot. Second, he argues that Officer Nelson violated his Fourth Amendment rights by searching the vehicle without probable cause. The court need not address Tafuna's first argument because it determines that the firearm and the confession must be suppressed because Officer Nelson lacked probable cause to search the vehicle.

The Fourth Amendment protects "the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (citation omitted). The Fourth Amendment guards against "unreasonable searches and seizures." *United States v. Sharpe*, 470 U.S. 675, 682 (1985). A vehicle search is unreasonable unless an officer has probable cause to believe that evidence of a crime is contained in the vehicle. *Carroll v. United States*, 267 U.S. 132, 158–59 (1925).

The Government does not argue that Officer Nelson had probable cause to search the vehicle. This concession is prudent. The open beer container in plain sight may have justified a citation or retrieval of the can as evidence. But it would not justify the search of the vehicle because Officer Nelson already had the evidence he needed to cite the vehicle occupants for any violation of open container laws. Tafuna's confession that he had a knife also did not constitute probable cause to search the vehicle. Once Officer Nelson asked Tafuna to exit the vehicle and retrieved the knife after a pat down, he had no reason to search the vehicle.

The Government argues instead that the vehicle search was valid under Tafuna's parole agreement. "[A] parole search may be upheld if [1] it is conducted pursuant to a state parole/probation system that [2] itself complies with the Fourth Amendment." *United States v. Tucker*, 305 F.3d 1193, 1200 (10th Cir. 2002); *see also United States v. Carter*, 511 F.3d 1264,

1268 (10th Cir. 2008) (“a probation [or parole] search will satisfy the Fourth Amendment if it was “carried . . . out pursuant to state law which itself satisfies the Fourth Amendment’s reasonableness requirement.” (alteration in original) (citation omitted)). Thus, the first step of the court’s analysis is to determine whether the vehicle search was permitted under Utah law.

Utah Code section 77-23-301(1) provides that “[a]n inmate who is eligible for release on parole shall, as a condition of parole, sign an agreement . . . that the inmate, while on parole, is subject to search or seizure *of the inmate’s* person, property, . . . *vehicle*, or personal effects while on parole . . . by a law enforcement officer at any time, with or without a search warrant, and with or without cause.” (Emphasis added). Pursuant to this statute, Tafuna signed a parole agreement stating that “while I am on parole I am subject to search and seizure of my . . . vehicle . . . by a parole officer or by any other law enforcement officer at any time (with or without a search warrant, and with or without cause).”

In determining whether Tafuna’s parole agreement authorized the search of the vehicle he was sitting in, the court interprets this agreement in accord with traditional contract principles. Thus, the court looks to the plain language of the contract to determine the parties’ meaning and intent. *Brady v. Park*, 445 P.3d 395, 407 (Utah 2019). In doing so, the court gives each term “its plain and ordinary meaning.” *Mind & Motion Utah Investments, LLC v. Celtic Bank Corp.*, 367 P.3d 994, 1001 (Utah 2016).

Tafuna’s parole agreement provides that “my . . . vehicle” is subject to search by law enforcement officers without a warrant and without cause. This agreement conforms with Utah Code section 77-23-301(1), which states that parolees must sign an agreement permitting suspicionless searches “of the inmate’s . . . vehicle.” The word “my,” which modifies vehicle in the parole agreement, indicates that Tafuna waived his Fourth Amendment rights as to vehicles

that he owns or operates. “My” is the possessive form of “I” and can indicate ownership of a piece of property, e.g., “my diamond ring” or “my pencil.” Even in the absence of title ownership, “my” could also describe a vehicle operated by the parolee. For example, if the parolee had borrowed a relative’s vehicle to drive to the store, he could reasonably say: “A cop pulled over my vehicle because I was speeding.” The term, “my vehicle,” however, cannot be stretched to include any vehicle that the parolee occupied as a passenger because the parolee would lack the ownership or control required to claim possession of the vehicle.

In this case, Tafuna did not own the vehicle that was searched; it was his friend’s car. Nor did Tafuna exercise possession or control over the vehicle by driving it. He merely sat in the passenger seat of the parked vehicle. Thus, the plain language of the parole agreement signed by Tafuna did not waive his Fourth Amendment rights as to the passenger area where Officer Nelson discovered the firearm.¹ Accordingly, Officer Nelson violated the Fourth Amendment when he searched this area without probable cause, and the firearm discovered pursuant to this search is inadmissible under the exclusionary rule. *See Mapp v. Ohio*, 367 U.S. 643, 654–55 (1961).

The court also concludes that Tafuna’s admission that the firearm was his, which was elicited during an interrogation conducted after Officer Nelson discovered the firearm, must also be excluded. The exclusionary rule applies not only to evidence directly discovered through an illegal search, but also to evidence that indirectly comes to light because of the constitutional violation. Thus, statements made immediately after an illegal arrest should be excluded as fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 486–87 (1963). Evidence acquired because of an illegal search may be admitted only if the connection between the illegality and the

¹ Because the parole agreement did not waive Tafuna’s Fourth Amendment protections under the facts of this case, there is no need to determine whether the waiver that Utah requires of its parolees comports with the Fourth Amendment.

evidence obtained is attenuated enough to purge the taint of the constitutional violation. *Id.* at 487–88. In this case, Tafuna’s confession was the direct result of his arrest and being confronted with the firearm discovered under his seat. Thus, the connection between the illegal search and Tafuna’s confession is strong enough to require the exclusion of his post-arrest interrogation as the fruit of the illegal search. *See id.* at 486.

CONCLUSION

For the foregoing reasons, the court determines that the firearm and ammunition seized from Tafuna because of the unlawful search are suppressed. Further, any statements made by Tafuna during his post-arrest interview are also suppressed.

DATED September 30, 2019.

BY THE COURT:


JILL N. PARRISH
United States District Court Judge